



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR, MNR, MNSD, MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, damage to the unit, damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on January 26, 2012, at 2:25 p.m. he attended at the tenant's place of work and personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing. The tenant's employer witnessed the landlord serve the tenant.

These documents are deemed to have been served in accordance with section 89 of the Act; however the Tenant did not appear at the hearing.

### Preliminary Matter

The application was amended to include unpaid February 2012, rent.

The landlord's claim for damage to the unit was premature; that portion of the claim was withdrawn; the landlord has leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on August 1, 2007; rent is \$1,450.00 per month due on the first day of each month. A deposit in the sum of \$725.00 was paid on July 20, 2007. A copy of the signed tenancy agreement was supplied as evidence.

The landlord stated that on January 10, 2012, at 11:30 a.m. he personally served the tenant's girlfriend with a Ten (10) Day Notice to End Tenancy for non-payment of Rent, which had an effective date of January 20, 2012. The landlord stated the tenant had told him that his girlfriend was moving into the unit. The landlord saw her vehicle there frequently and understood she was an adult with whom the tenant was living. On January 11, 2012, the landlord went to the rental unit and spoke with the tenant, who acknowledged receipt of the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$8,900.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord stated that the tenant owes \$470.00 from August 2011, and that no rent was paid since that time until he gave the landlord \$750.00 toward February, 2012, rent owed. When the tenant paid the \$750.00 the landlord told him that he was continuing to proceed with eviction. The landlord stated the tenant currently owes \$8,420.00 in unpaid rent from August 2011, to February, 2012.

The landlord claimed \$300.00 in late fees; the addendum to the tenancy agreement imposes fees in the sum of \$50.00.

### Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 20, 2012, pursuant to section 46 of the Act. I find that service of the Notice was completed by giving the Notice to an adult who apparently resides with the tenant.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$8,420.00 between August 2011 and February, 2012, inclusive that the landlord is entitled to compensation in that amount.

As the addendum to the tenancy agreement term imposing fees exceeds the amount allowed by the Regulation, \$25.00; the claim for late fees is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$740.87, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$8,520.00, which is comprised of unpaid rent from August 2011 to February 2012, inclusive and \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$740.87, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$7,779.13. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The claim for late fees is dismissed.

The landlord withdrew the claim for lock replacement and has leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2012.

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Residential Tenancy Branch